

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERT L. TURNER,

Defendant-Appellant.

UNPUBLISHED
October 29, 1999

No. 208790
Recorder's Court
LC No. 97-002664

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

A jury convicted defendant of attempted first-degree home invasion, MCL 750.92; MSA 28.287; MCL 750.110a(2); MSA 28.305(a)(2), and the court sentenced him as a fourth habitual offender, MCL 769.12; MSA 28.1084, to twelve to twenty years' imprisonment. Defendant now appeals as of right. We reverse and remand for a new trial before a different judge.

I

Defendant argues that the trial court failed to comply with the waiver of counsel procedures that required the trial court to inform him of the dangers of self-representation and to inquire as to whether defendant was capable of representing himself and not disrupting trial. We disagree. We review a trial court's decision to grant a criminal defendant's request to proceed in propria persona for whether the trial court substantially complied with the waiver of counsel procedures set forth in *People v Anderson*, 398 Mich 361; 241 NW2d 857 (1976), and MCR 6.005(D). *People v Adkins*, 452 Mich 702, 706; 551 NW2d 108 (1996).

Anderson requires first that a defendant's request to represent himself be unequivocal. *Anderson, supra* at 367; See *Adkins, supra* at 722. Second, the trial court must determine that the defendant's assertion of his right is knowing, intelligent, and voluntary. *Adkins, supra* at 722; *Anderson, supra* at 368. Third, the trial court must determine that the defendant's self-representation will not disrupt, inconvenience, or burden the court. *People v Dennany*, 445 Mich 412, 432 (Griffin, J); 519 NW2d 128 (1994); *Anderson, supra* at 368; *People v Ramsdell*, 230 Mich App 386, 405-

406; 585 NW2d 1 (1998). Fourth, the trial court must comply with the requirements of MCR 6.005(D). *Adkins*, *supra* at 722. MCR 6.005(D) provides, in pertinent part:

The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first

(1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and

(2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

Here, prior to the start of trial, defendant unequivocally stated several times that he desired to represent himself. The trial court advised defendant that he would be held to the same standards as other members of the bar during the proceedings if he chose to proceed in *propria persona*. Defendant asserted that he understood such risks and, despite his lack of legal training, intended to proceed without counsel. Accordingly, defendant understood that, by proceeding in *propria persona*, he would necessarily waive his right to counsel. The trial court also advised defendant of the charge against him and the maximum possible sentence during a pretrial hearing, which provided adequate notice of the possible sentence. Defendant had been convicted of several prior charges and, thus, had some knowledge of trial procedure. We therefore conclude that the trial court's inquiries substantially complied with the requirements of *Anderson* and MCR 6.005(D), and that the trial court did not err in allowing defendant to proceed in *propria persona*.

II

Defendant next argues that the trial court's conduct of repeatedly gagging him in the presence of the jury, making disparaging remarks and assuming an adversarial posture toward defendant deprived him of a fair and impartial trial. We agree. We review the entire trial record to determine if the trial court's conduct pierced the veil of judicial impartiality by unduly influencing the jury and, thereby, depriving the defendant of a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 340; 534 NW2d 342 (1995). Here, the trial court's extreme impatience with defendant, represented by its repeated orders that defendant be gagged with tape, its numerous disparaging remarks to defendant and its frequent interference with defendant's presentation of his defense pierced the veil of judicial impartiality. *Id.* We recognize that a trial court has wide discretion and power to control trial proceedings and to limit the introduction of evidence and argument of counsel to relevant and material matters while considering the need to expeditiously and effectively ascertain the truth of the matters involved. MCL 768.29; MSA 28.1052; *People v Ullah*, 216 Mich App 669, 674; 550 NW2d 568 (1996). Moreover, a defendant who succeeds in asserting his right to self-representation should be held to the same standards of presentation as a member of the bar, including the adherence to procedural and substantive law. See *People v Burden*, 141 Mich App 160, 164; 366 NW2d 23 (1985). However, a trial court's power and discretion over the conduct of a trial is not unlimited. *Paquette*,

supra at 340. A criminal defendant is entitled to a neutral and detached magistrate. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996).

Here, the lower court record establishes that the trial court exhibited a high degree of frustration and impatience with defendant from the outset of trial. Orders for defendant to “shut up,” “shut your mouth” and “keep your mouth shut” are pervasive within the lower court record. On several occasions, the trial court threatened to gag defendant and did, in fact, order him to be gagged with tape numerous times in the presence of the jury. On at least two occasions, defendant was gagged for extended periods of time while the trial court engaged in lengthy explanations of trial procedure and spoke personally with jurors. The trial court called defendant names and made several comments during trial which evidence an attitude of partiality. For example the trial judge obliquely called defendant a rat, addressed him as “diddely boy” and stated that defendant had “diarrhea of the mouth”. We conclude that the aforementioned conduct denied defendant a fair and impartial trial.

While we understand the court’s frustration with defendant’s failure to abide by the standard norms of advocacy and professional courtesy, we cannot allow the trial court to allow the proceedings to degenerate into a name-calling contest, nor can we permit the trial court to dispense with the appearance of impartiality which is so crucial to a fair trial and due process. We therefore reverse and remand for a new trial before a different judge. Because we reverse, it is unnecessary to review the merits of defendant’s additional claims on appeal.

Reversed and remanded for a new trial before a different judge. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Hilda R. Gage